

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Kevin Cronin, et al	:	Case No. 1:09CV2699
	:	
Plaintiffs	:	Judge Solomon Oliver
	:	
vs.	:	(Magistrate Judge Baughman)
	:	
The Ohio Department of	:	<b>POSITION STATEMENT OF PARTIES</b>
Transportation, et al.	:	<b>REGARDING AGENDA FOR CASE</b>
	:	<b>MANAGEMENT CONFERENCE</b>
Defendants.	:	

Kevin Cronin, Plaintiff and counsel for ClevelandBikes, Plaintiff, Richard J. Makowski, Assistant Attorney General, counsel for Defendants, the Ohio Department of Transportation and Jolene M. Molitoris, Director (hereafter “the State Defendants”); and Lisa Hammond Johnson, Assistant United States Attorney, counsel for Defendants, United States of America, Department of Transportation and Federal Highway Administration (hereafter “the Federal Defendants”), pursuant to Federal Civil Rule of Procedure 26(f) and Local Rule 16.3(b)(3), hereby submit the following statements of their position(s) regarding the agenda for the Case Management Conference to be held on **Tuesday, April 27, 2010**.

1. This case has been assigned to the standard track until further order of the Court.
2. This case is **not** suitable for one or more of the following Alternative Dispute Resolution (“ADR”) mechanisms:

_____ Early Neutral Evaluation	_____ Summary Jury Trial
_____ Mediation	_____ Summary Bench Trial
_____ Arbitration	

3. The parties do **not** consent to jurisdiction of the United States Magistrate Judge under 28 U.S.C. § 636(c).

4. **Non-expert Discovery** shall be completed on or before \_\_\_\_\_.  
Discovery shall be conducted according to the guidelines set forth in Local Rule 16.2(a) for cases assigned to the case management track referred to in item no. 1 above. The Court specifically directs the parties to comply with Local Rule 37.1, including the obligation to contact the presiding judicial officer by telephone before filing any motion under Federal Rule of Civil Procedure 37 seeking aid from the Court in discovery matters.

Position of the State Defendants and the Federal Defendants: 1. Motions to dismiss for lack of jurisdiction filed by both State and Federal Defendants are still pending. Until such motions have been decided, discovery would be inappropriate. (2) If any action can be brought for judicial review of Defendants' issuance of the Draft Environmental Impact Statement, the Final Environmental Impact Statement or the Record of Decision issued for the Cleveland Innerbelt highway improvement project, relating to plans to incorporate or not to incorporate bike and pedestrian facilities on a new Innerbelt Bridge; or relating to plans to eliminate interchanges at Carnegie or Prospect Avenues, such action must be brought under the federal Administrative Procedure Act (5 U.S.C. §§701, et seq.) . In that event, the case would be litigated on the basis of an administrative record of the planning and environmental process to be filed by the Defendants. Discovery would not be involved in such action.

Position of Plaintiffs: Plaintiffs believe that there should be a direct action available for claimed violations of 23 U.S.C. §217 and other environmental or federal highway statutes cited in their amended complaint; and that discovery should be available, pursuant to the expedited discovery filed at the outset of this action. In the alternative, plaintiffs believe the pending motion to Amend the Complaint, filed April 20, 2010, should be granted. Further, plaintiffs assert that discovery should proceed, based on the Motion for Expedited Discovery filed at the commencement of this action.

On April 20, 2010, Defendants' counsel were sent copies of Plaintiffs' Motion for Leave to file a second Amended Complaint with a copy of that proposed pleading, which Plaintiffs' counsel had indicated he was considering filing during the Case Management Conference agenda planning meeting. Defendants reserve the right to review those pleadings and to file appropriate responses to that Motion.

5. **Expert reports** must be submitted to opposing counsel on or before \_\_\_\_\_, for the party bearing the burden of proof on the issue addressed. Responsive reports are due by \_\_\_\_\_. **Expert discovery** shall be completed on or before \_\_\_\_\_.

The State and Federal Defendants hold the same position stated in connection with non-expert discovery. Plaintiffs note they have not proposed to present expert testimony but, in the event expert testimony is required, plaintiffs will comply with whatever schedule the Court deems appropriate.

6. **Filing of Discovery Materials.** Unless otherwise ordered by the Court, initial disclosures, discovery depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall **not** be filed in the Electronic Case Filing System, except that discovery materials may be filed as evidence in support of a motion or for use at trial.

7. The **pleadings shall be amended** and **new parties shall be joined** in the event that Defendants' motions to dismiss are denied, amendments shall be filed within thirty (30) days after the filing of the order on such motion.

As noted, Plaintiffs filed a Motion for Leave to File an Amended Complaint to add a claim under the federal Administrative Procedure Act. While a prior Motion for Injunctive Relief was denied, citing no appearance of emergency circumstances, the Court acknowledged that should circumstances change, the request for injunctive relief may be renewed. Plaintiffs point out the State Defendants have certain deadlines set in their contracting process for proposing submissions

Alternative Technical Concepts (ATC), such as bicycle and pedestrian lanes, to the design-build contract for construction of the new Innerbelt Bridge, including deadlines for requesting review meetings with state defendant or deadlines for submitting ATC plans and may file additional requests for injunctive relief.

In the event that Plaintiffs do file additional requests for injunctive relief, Defendants reserve the right to file appropriate replies.

8. **Dispositive motions** shall be filed on or before: in the event that Defendants's motion to dismiss are denied; dispositive motions should be filed within 60 days following the filing of the administrative record.

s/ Kevin Cronin

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